IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2662 of 1984
With
SPECIAL CIVIL APPLICATION No. 4483 of 1984
With
SPECIAL CIVIL APPLICATION No. 1593 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MANUBAHI M. BHATT & 3 - Petitioners
Versus
AHMEDABAD MUNICIPAL CORPN. & 2 - Respondents

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Appearance :

1.Special Civil Application No. 2662 of 1984
SERVED BY AFFIX.(N) for Petitioners.
MR BP TANNA for Respondent No. 1.

NOTICE NOT RECD BACK for Respondent(s) : 2 – 3.

2.Special Civil Application No. 4483 of 1984
GIRISH PATEL & ASSOCIATES for Petitioners.
MR BP TANNA for respondent No. 1.

3.Special Civil Application No. 1513 of 1990
MRS KETTY A MEHTA WITH MR CB DASTOOR for petitioners.
MR BP TANNA for respondent No. 1.
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 24/03/2006

COMMON ORAL JUDGMENT

1.Since the subject matter of all the three petitions is inter-connected and they were earlier ordered to be heard together, they are taken up for hearing and are being disposed of by this common judgment.

2.Special Civil Application No. 2662 of 1984 is filed by in all four petitioners praying for quashing and setting aside the Resolution of the Standing Committee dated 09.05.1984 and the Resolution of the Municipal Commissioner dated

10.05.1984. Directions were also sought for by the petitioners in this petition to promote them to the post of Valuation Officer in the pay scale of Rs. 650 – 1040 and to grant them all consequential benefits like seniority, promotion, pay, arrears of salary etc. on that basis. The petitioners have also prayed for the prohibitory order restraining the respondents from taking any valuation, survey and assessment work from the Ward Officers.

3.Special Civil Application No. 4483 of 1984 is filed by in all 23 petitioners praying for quashing and setting aside the order dated 28.08.1984 and also praying for the directions to the respondents to offer the pay scale of Rs. 700 – 1300 to the petitioners. The petitioners have also prayed for quashing and setting aside the appointments of respondent Nos. 2 to 7. By way of an interim relief, the petitioners have prayed for the directions to

the respondent No. 1 – Corporation to continue to pay salary in the pay scale of Rs. 700 – 1300 to the petitioners which they were receiving prior to 20.08.1984. The petitioners have also prayed for the suspension of the order dated 20.08.1984 and stay against the implementation of the order of reversion passed by the respondent Corporation on 20.08.1984.

4.Special Civil Application No. 1593 of 1984 is filed by in all four petitioners praying for the directions to the respondent – Corporation to offer the petitioners duties as Ward Officers or of similar such character in the services of the Corporation. The petitioners have also prayed for the direction to the respondents to grant the petitioners continuity of benefit in the scale of pay of Ward Officers w.e.f. 20.08.1984, the date on which the petitioners were reverted to the scale of Rs. 550 – 900 and that the petitioners be paid the

arrears of salary w.e.f. 20.08.1984 till 21.04.1988 in respect of petitioners No. 1 & 2 and till 31.12.1988 in respect of petitioner No. 3 when the petitioners were placed in the scale of Rs. 2200 – 4000. The petitioners have also prayed for the directions to the respondent – Corporation to grant continuity of benefit to the petitioners in the scale of Rs. 700 – 1300 w.e.f. 28.11.1981 till 21.04.1988 and till 31.12.1988 for petitioner No. 3 for the purpose of retiral benefits.

5.The brief facts giving rise to all the three petitions are as under :-

With a view to bring decentralisation in the services of the Corporation and in order to meet with the demands of the public and to provide efficient services to them in the context of the expansion of the Municipal Corporation area, it was decided in 1981 that

the Corporation be divided into 9 zones and it was further decided to have Zonal Officers and Ward Officers. The personnels of the Ward Offices were to be drawn from the Corporation employees, and only those employees who were competent enough to man the services were to be selected for the posts of Ward Officers. The posts of Ward Officers were to carry the time scale of Rs. 700 – 1300, while those of Zonal Officers were to carry the time scale of Rs. 1300 – 1700 and Ward Officers were entitled to motor cycle allowance and other allowances. The main duties of the Ward Officers were maintenance, sanitation and conservancy, lease and licences and review and accounts. The proposal was mooted by the then Municipal Commissioner. The Standing Committee of the Corporation considered the said proposal and passed a Resolution on 08.09.1981. It was resolved that separate ex-cadre posts of Ward Officers in the time scale of Rs. 700 – 1300 be

created and recruitment from the Municipal employees having 7 years of experience be made and the employees so selected to these posts were to continue to have their lien in the parent cadre. The Standing Committee, vide its resolution dated 09.09.1981 approved of the recommendations made by the Municipal Commissioner. The said recommendations were placed before the General Board of the Municipal Commissioner and the General Board by its Resolution dated 29.09.1981 approved the Resolution of the Standing Committee.

6. Pursuant to the Resolution of the Standing Committee, a circular was issued by the Corporation and circulated amongst the employees of the Corporation so as to enable them to apply for the post of Ward Officers. According to the Circular, all posts of Ward Officers were permanent in the time scale of Rs. 700 – 1300 and they would be entitled to

motorcycle allowance and other allowances. The qualifications were Graduate of any branch or any equivalent qualification and that the employees must have put in at least seven years service in any department of the municipal Corporation. The appointment was to be made by selection. Pursuant to the said Circular, 800 employees of the Corporation applied for being considered for the said posts of Ward Officers. The staff selection committee prepared a list of 46 persons and the first 29 were selected and 16 were kept on the waiting list.

7.On 19.03.1982, nine more posts of Ward Officers were created and again by circular dated 29.03.1982, applications were invited for being considered for the said posts. There were 500 applicants, out of whom a list of 33 persons was prepared by the selection committee. The petitioners in Special Civil Application No. 1593 of 1990 were persons who have been

appointed to the post of Ward Officers pursuant to the said circular.

8. The Municipal Corporation on 09.05.1984 proposed conversion of the 9 Zones into 5 Zones. The proposal was accepted by the Standing Committee. The Standing Committee resolved that out of 36 Ward Officers, 24 Ward Officers were absorbed and transferred to the valuation office. Their designations were to remain as Ward Officers. On 10.05.1984, 20 Ward Officers were assigned the work of valuation and transferred to the valuation department. The petitioners in Special Civil Application No. 1593 of 1990 were transferred to the engineering department by Resolution dated 14.05.1984. On 28.08.1984, the zonal system was totally closed and the petitioners were reverted to the original cadre of Assistant Engineers by an order No. 6438 dated 29.08.1984 i.e. to the scale of Rs. 550 – 900.

9.Some of the officers have challenged the action of the Corporation in reverting them from Ward Officers to their parent cadre by filing Special Civil Application No. 4483 of 1984 which has been admitted by the Division Bench of this Court and interim relief protecting their scale of pay has been granted on 27.09.1984. Some of the petitioners of the said Special Civil Application No. 4483 of 1984 preferred Civil Application No. 593 of 1989 for their absorption as Ward Officers or on a post of similar character, inter alia, contending that some of the petitioners were already absorbed as Administrative Officers, which were the posts equivalent to Ward Officers. When the said application came up for hearing, the learned advocate appearing on behalf of the Corporation stated that as and when the post of Ward Officers would be filled in, all the petitioners would be absorbed.

10.During the pendency of this petition, the petitioners of Special Civil Application No. 4483 of 1984 have been absorbed either as Ward Officers or as Administrative Officers. The petitioner Nos. 1,2 & 4 of Special Civil Application No. 1593 of 1990 have been promoted as Assistant City Engineers and the petitioner No. 3 has been promoted by an order dated 31.12.1988 to the said post in the scale of Rs. 700 – 1300.

11.The first petition being Special Civil Application No. 2662 of 1984 was filed against assignment of valuation work to the Ward Officers and against the absorption of these ex-cadre Ward Officers under the Assessor and Tax Collector for doing valuation and assessment work and denial of promotion to the petitioners to the post of Valuation Officers in the pay scale of Rs. 650 – 1040. According

to the petitioners, the said action of the respondent Corporation was arbitrary, capricious, discriminatory, vitiated by malafide, both legal and factual and effect a change in contravention of Section 9A and 33 of the Industrial Disputes Act and violative of Articles 14 & 16 of the Constitution of India. The petitioner Nos. 1 to 3 of this petition were among the senior most eligible employees for the post of Valuation Officer in the pay scale of Rs.650 – 1040. The respondent Nos. 2 & 3 in this petition were the Ward Officers, ex-cadre employees who have been ordered to be absorbed under the Assessor and Tax Collector. Despite the fact that the petitioner Nos. 1 to 3 were among the senior most eligible employees for promotion, they were denied the said promotion on the abolition of the post of Valuation Officer vide Resolution of the Standing Committee dated 09.05.1984. Pursuant to this Resolution, the Ward Officers who were

ex-cadre employees, have been ordered to be absorbed under the Assessor and Tax Collector for doing the valuation and assessment work. Thus, Ward Officers never in their past have worked as a Valuation Officer and they have no experience of valuation assessment work. Vide Resolution dated 10.05.1984, 20 Ward Officers were absorbed for doing valuation and assessment work under Assessor and Tax Collector. It is the case of these petitioners that they were due and eligible for promotion to the post of Valuation Officer in the pay scale of Rs. 650 – 1040 and but for the absorption of the Ward Officers, the petitioners would have been appointed to the post of Valuation Officer in the said pay scale. It is their case that the denial of promotion to the petitioners was contrary to the award of the Industrial Tribunal. The petitioners have experience of valuation and assessment work and they have been appointed by

the respondent Corporation to the post of Valuation Officers in the past on many occasions as and when required. The post of Ward Officers was ex-cadre post. As against this, the post of Valuation Officer was the post attached with the statutory duties as laid down in Chapter 8 of Schedule A of the Bombay Provincial Municipal Corporation Act, 1949. Though the Resolution was passed, the same was not implemented. Necessary records and stationary for doing valuation, survey and assessment work was not ready and available and hence, till the date of filing of the petition, only recovery work was being done by the Ward Officers and had not been assigned the valuation, survey and assessment work.

12.Notice was issued by this Court on 22.05.1984 in this petition and ad-interim relief in terms of para 13 (a) was granted whereby the respondent – Corporation was restrained from

implementing the resolution of the Standing Committee dated 09.05.1984 and the Municipal Commissioner dated 10.05.1984. The petition was thereafter admitted and the interim relief was ordered to be continued in the same form on 27.09.1984.

13.In Special Civil Application No. 4483 of 1984, the case of 23 petitioners was that on 28.08.1984, all the Ward Officers were served with orders reverting them to their original posts. The posts of Ward Officers were permanent ex-cadre posts. The approval of the General Board of the Municipal Corporation was also sought for as required under the Act and the Municipal Corporation had approved the said proposal of the Standing Committee by Resolution dated 29.09.1981. The Standing Committee has not passed any Resolution for abolition of the posts of Ward Officers. On the contrary, the Standing Committee in its

Resolution dated 09.05.1984 has resolved that if as a result of the reorganization of the zones, some Ward Officers, Head Clerks, Peons become surplus in their zones, it was competent for the Municipal Commissioner to place them elsewhere and he was authorized to act accordingly. The definite purpose of the Standing Committee was that 24 Ward Officers were to be utilised in various establishments of the Corporation. Thus, Resolution of the Standing Committee made the provision clear that the Ward Officers would continue to have their designation as Ward Officers and that their salary would continue to be the same and that instead of being under the zonal offices, they would be working under the respective establishments of the Corporation where they were required to work. It is also their case that as Ward Officers, they were required to attend to public complaints in respect of drainage, water conservancy, building etc.

Since these duties were to be discharged by the Corporation, the order directing the reversion of the petitioners was absolutely unjustified and since the zonal system was not completely abolished and city was divided into five zones, there was no reason for reverting the petitioners from the post of Ward Officers. The petitioners have also raised a contention that even after transfer of 24 Ward Officers to valuation department and 6 Ward Officers to octroi department, still 6 Ward Officers continued to function as Ward Officers. The order reverting the said 6 Ward Officers was arbitrary and discriminatory and no valid reason existed for their reversion. It is only because of the fact that the Ward Officers' posts were made permanent by the Municipal Corporation, the petitioners had applied for being considered for the said post. The petitioners have been selected by the staff selection committee and some of the petitioners

have been selected from the post of Junior Clerks to the post of Ward Officers because of their competence. It is also their contention that the zonal system was a system whereby each Zone was to continue to work as a separate entity itself by discharging all the functions of the Corporation. It was the policy of decentralisation and even if this policy were not to be approved by the Corporation, the work that the zonal Officers and Ward Officers were performing did not vanish or disappear. The work continued and the work has to be taken by the separate Departments. It is, therefore, contended that the action of the respondent was totally illegal, unjustified and inequitable.

14.In Special Civil Application No. 1593 of 1990, the grievance of the petitioners was that these petitioners and the petitioners of Special Civil Application No. 4483 of 1984 were similarly situated. As a matter of fact, the

petitioners have been performing the duties of Ward Officers to the satisfaction of all concerned. The petitioners have worked in the property tax department, valuation department, engineering department and also in octroi department. The salary and scale of pay of Assistant City Engineers was equivalent to the scale of Ward Officers and, therefore, there was no reason why the petitioners should be denied the benefit of being Ward Officers. Even others juniors to the petitioners have been absorbed as Ward Officers in 1989. The Standing Committee of the Corporation by Resolution dated 19.01.1988, once again opted for the establishment of zonal system. Provision was also made for appointment of Ward Officers. The Corporation has also created posts of Administrative Officers in the scale of Rs. 2200 – 4000. The petitioners earned their promotion in the engineering department in the scale of Rs. 2200 – 4000 and the petitioners

were in the equivalent scale of Administrative Officers.

15.The petitioners did not institute the Special Civil Application when they were reverted to the post of Assistant Engineer since the loss occasioned to them was minimum as against the petitioners of Special Civil Application No. 4483 of 1984. Since the Corporation has reverted to the earlier policy of having zonal system and was making appointments to the post of Ward Officers, it was just and proper that the case of the petitioners should also be considered for absorption to the said post and to grant them continuity benefit.

16.Mr. B.P. Tanna, learned Senior advocate appears on behalf of the respondent No. 1 – Corporation in all the three petitions. In Special Civil Application No. 2662 of 1984, an affidavit-in-reply is filed by the Deputy

Municipal Commissioner (Administration). Mr. Tanna has submitted that there were no permanent posts of Valuation Officers in the tax department and there have never been any such posts in the said department. He has, therefore, submitted that there was no question of any one being appointed on the post of Valuation Officer in the tax department. The contentions of the petitioners, therefore, in this behalf are entirely misconceived and ill-founded. The posts of Valuation Officers were for the first time envisaged and created in the Octroi department of the Corporation in the year 1967 – 68. Thereafter, several posts were created from time to time by way of adhoc arrangement in the octroi department and in no other department, much less in the tax department of the Corporation, such posts were created. A fresh assessment book was required to be prepared every four years under the Rules contained in Chapter VIII of Schedule to the

Bombay Provincial Municipal Corporation Act, 1959 and accordingly, quadrennial revision of assessment was undertaken for the purpose of fresh assessment book. For this purpose, the Corporation has been creating posts of Chief Valuation Officer and other Valuation Officers purely on a temporary basis. As and when the work was over, the posts being temporary, stood discontinued. Further, the staff has been drawn on each occasion from various departments of the Corporation to fill in these temporary posts in the tax department for the purpose of quadrennial revision and when the work was over, the staff went back to their respective parent department in the Corporation. Thus, there have never been any permanent posts of Valuation Officers and there was no cadre, either temporary or permanent, of Valuation Officers in the tax department and under the circumstances, there were no posts which were filled in or which were vacant in the tax

department. There was no question of considering the petitioners or others for being appointed or promoted or transferred to any such posts of Valuation Officers in the tax department.

17.Mr. Tanna has further submitted that the petitioners have mainly challenged in this petition the assignment of valuation work to the Ward Officers and what they call was absorption of ex-cadre Ward Officers, under the Assessor and Tax Collector for doing valuation and assessment work and denial of promotion to the petitioners to the posts of Valuation Officers in the pay scale of Rs. 650 – 1040. There were no posts of Valuation Officers in the tax department or under the Assessor and Tax Collector and, therefore, there was no question of absorbing Ward Officers or any one or more of them on any such post or posts. Hence, there could not be any question of

denial of promotion to the petitioners, as alleged or otherwise, much less, there could be any question of promotion to any higher post, as contended by the petitioners. In this view of the matter, there was no question of application of the award of the Industrial Tribunal in Reference (IT) No. 102 of 1973 referred to by the petitioners in this petition. He has further submitted that under Section 67 (3) of the Act, the entire executive power for the purpose of carrying out the provisions of the Act vests in the Commissioner who is empowered to prescribe the duties of and exercise, supervision and control over the acts and proceedings of all municipal Officers and servants. He has, therefore, submitted that the Municipal Commissioner was competent to prescribe duties to the Ward Officers by asking them to carry out the work of valuation or such other work of the Corporation as he thought necessary at any given point of time. Since it

was decided to reorganise the administrative zones in the Municipal Corporation and since it was decided to withdraw several functions which were being given to the Zonal Officers and since the said functions were given to the parent departments in the Corporation, duties of the Ward Officers were considerably reduced and, therefore, the Commissioner thought it fit and proper to allocate other duties to such Ward Officers. Mr. Tanna has further submitted that the petitioner Nos. 1,2 & 3 have already been promoted in an acting capacity in the pay scale of Rs. 650 – 1040. They could have no grievance in this behalf. As and when vacancy arose in the posts, carrying the pay scale of Rs. 650 – 1040 in the Corporation, the same would be filled in, in accordance with the policy of the Corporation and having regard to the award of the Industrial Tribunal.

18.An affidavit-in-reply was filed on behalf of

the respondent Nos. 2 & 3. Initially, Mr. S.B. Vakil, learned Senior advocate was appearing on behalf of respondent Nos. 2 & 3. However, subsequently he has withdrawn his appearance and on issuance of fresh notice, nobody appears on behalf of the respondent Nos. 2 & 3. In affidavit-in-reply, more or less same contentions were raised which were raised by the Corporation in its affidavit-in-reply. It was reiterated at more than one place that the posts of Valuation Officers on which the petitioners might have worked in the past were temporary posts created for carrying out the valuation work in respect of quadrennial year. There was no post of Valuation Officer, much less in the pay scale of Rs. 650 – 1040 and no Ward Officers was appointed to such posts. There was no denial of any promotion to the petitioners. Moreover, the petitioners could not challenge abolition of any posts on the ground that if such posts were not abolished,

the petitioners would have been entitled to claim promotion to such posts. No posts designated as Valuation Officers have been determined under Sub-section (1) of Section 51 or set forth in any statement under sub-Section (2) of Section 51 of the Act which exists and which has been abolished and that no prescribed eligibility criteria or qualifications exist in relation to such posts. The impugned resolution has already been implemented and the valuation, survey and assessment work has been assigned to Ward Officers. Under the provisions of the Act, the valuation work has to be completed during the course of the official year to which it relates and hence, no useful purpose was served by getting the valuation work held up. It is, therefore, submitted that the Court should not restrain the respondent Corporation from taking work of valuation, survey and assessment from Ward Officers.

19.So far as Special Civil Application No. 4483 of 1984 is concerned, an affidavit-in-reply was filed by the Deputy Municipal Commissioner (Administration) in September, 84. With regard to this petition, Mr. Tanna has submitted that the petitioners have challenged the order dated 28.08.1984 reverting them to their original posts from the post of Ward Officers. The petitioners were appointed to the posts of Ward Officers purely in an acting capacity. The posts of Ward Officers were purely ex-cadre posts and the persons appointed on such posts retain their permanent lien in their parent posts in various department in the Municipal Corporation. He has, therefore, submitted that the petitioners who were appointed purely in a temporary capacity on the posts of Ward Officers and who were holding permanent posts in various departments of the Corporation and who were having their lien on such permanent posts in various departments of the Corporation

could have no legal right to continue on such posts, especially when the zonal system has been for all practical purposes wound up. The zonal system was introduced by the Corporation with a view to decentralise its administration. However, experience since its introduction has led the administration to review and revise the whole set up as there was no work left for the Ward Officers to do in reduced number of Zones. Since the zonal system is for all practical purposes has been wound up and only a skeletal set up has been retained and that too, particularly only for conservancy services, there was no question of continuing the Ward Officers in the zones on their posts of Ward Officers. Simply because the posts were permanent, the temporary incumbents on such posts did not have any right to continue on or claim such posts, especially when no one vice them has been appointed on the post of Ward Officer. The zonal system was an experiment,

seriously undertaken, but has not been found to have succeeded as was expected. Under the circumstances, the Corporation has every right and indeed a duty to reconsider the issue and reorganization of set up and, if in doing so, persons appointed in an acting capacity are reverted to their parent posts, they cannot be heard to make any grievance in this behalf.

20.There was no question of any change with the service conditions of any person as has been sought to be contended by the petitioners. The set up in the administration is maintained or created to mean public services and provide civic amenities to the citizens and not for providing promotions or appointments to the members of the staff. He has, therefore, submitted that there is no substance in the petition and the Court should dismiss the same.

21.So far as Special Civil Application No. 1593

of 1990 is concerned, an affidavit-in-reply was filed by the Assistant Manager on 15.04.2004. Mr. Tanna has raised certain preliminary objections against maintainability of this petition on the ground of petition being barred by delay and laches. The petitioners have prayed, inter alia, for being granted the relief of being offered the duties of Ward Officers or the duties of such similar character with the Corporation and also prayed for continuity in the scale of pay of Ward Officers. More or less, all the relief claimed by the petitioners pertain to either being appointed as Ward Officers or being granted the scale of pay of Ward Officers for the interregnum period i.e. from the date they were reverted to the date on which they were subsequently appointed to the post of Assistant City Engineer which post carries equivalent pay scales. There is also one additional prayer for being granted the pay scale of Ward Officers

from 28.11.1981 till 1988 for the purpose of retiral benefits. In this context, he has submitted that the petition was preferred in the year 1990. The cause of action i.e. challenge against order of reversion arose on 28.08.1984 i.e. the date on which the petitioners were reverted. He has, therefore, submitted that the petitioners, on that relevant point of time, did not challenge the reversion and thereafter, after the lapse of about six years have challenged their order of reversion on the ground that relief has been granted to similarly situated persons by this Court in Special Civil Application No. 4483 of 1984. The petitioners of Special Civil Application No. 4483 of 1984 were vigilant enough to challenge their orders of reversion immediately whereas the petitioners of this petition acted as fence sitters and when this Court has granted interim relief to the petitioners of Special Civil Application No.

4483 of 1984, the present petitioners had felt the need to prefer this petition. Since the petitioners have come at a very belated stage and since the petitioners themselves had acquiesced the situation for six years, they could not turn around and challenge the reversion of 1984 in a petition filed in 1990.

22.Mr. Tanna has further submitted that the post of Ward Officers were purely ex-cadre post and persons appointed on such posts retain their permanent lien in their parent posts in various departments of the respondent – Corporation. The petitioners who were appointed purely on a temporary capacity on the post of Ward Officers and were holding permanent posts in various departments of the Corporation who were having their lien on such permanent posts in various department of the Corporation did not have any legal right to claim continuity in the said post especially when the zonal system where the

posts of Ward Officer figured has been wound up for all practical purposes. Over and above this, he has submitted that except for petitioner No. 1 who has incurred a loss of 30 in his basic pay, all other petitioners were better of in terms of salary in their reverted posts. Thus, after six years of reversion, the petitioners should not have any grievance against such reversion order. The petitioners No. 1 & 2 and 4 have been promoted to the post of Assistant City Engineers vide order dated 28.04.1984 and the petitioner No. 3 has been promoted to the said post on 31.12.1988. The pay scale for the post of Assistant City Engineer was the same as carried by the post of Ward Officers. Hence, there was no serious monetary loss caused to the petitioners.

23.Mrs. Ketty A. Mehta, learned advocate appearing for the petitioners, in rejoinder has submitted that there is no delay in as much as

the question of fundamental rights of the petitioner under Articles 14 & 16 is raised in the present petition. Once the Corporation makes the commitment before the Court and implements the same qua the petitioners of Special Civil Application No. 4483 of 1984 and if the present petitioners are similarly situated, they are entitled to equal opportunity in the matter of employment and equality under Article 14 & 16 of the Constitution of India. If the same is denied and there is breach of fundamental right of the petitioners, the question of delay becomes irrelevant. The Corporation being the state within the meaning of Article 12 of the Constitution of India, is bound to follow the fundamental rights enshrined with the petitioner under Articles 14 & 16 of the Constitution of India and if it violates the same, this Court has to consider the case of the petitioners regarding violation of their

fundamental rights.

24.She has further submitted that the petitioners have claimed appointment as Ward Officers and have claimed the scale of pay of Ward Officers for the period from the date they were reverted to the lower posts till the date on which they were subsequently appointed to the post of Assistant City Engineer on the basis of equal treatment in the matter of employment. The petitioners are also entitled to the pay scale of Ward Officers from 28.11.1981 till 1988 for the purpose of consequential benefits. The petitioners of this petition as well as the petitioners of Special Civil Application No. 4483 of 1984 were identically situated and if the Corporation has followed the procedure for appointment and promotion in case of petitioners of Special Civil Application No. 4483 of 1984, the present petitioners are also entitled to the same treatment.

25.She has further submitted that even if it is assumed for the sake of argument that the post of Ward Officers were ex-cadre posts and the persons appointed on such posts retain their lien in the present parent post in the Corporation, however, the similarly situated petitioners of Special Civil Application No. 4483 of 1984 were given posting and pay protection and subsequently absorbed as Administrative Officers by the Resolution of the Corporation and were given regular promotions in the administrative branch and hence the present petitioners who were also Ward Officers, were entitled to pay protection and absorption in the administrative offices and were also entitled to regular promotion in the said branch. The present petitioners who were working in the zonal system in the Engineering cadres were better qualified to meet with the day to day essentially utility

services and were also entitled to protection and reinstatement and subsequent gradation in promotion and salary on the same basis as the petitioners of Special Civil Application No. 4483 of 1984, who were less qualified than the present petitioners. There is loss of three increments to the petitioners in the pay scale of Deputy City Engineer, the post on which the petitioner No. 4 was working. The petitioner No. 4 has suffered in his promotion and he was not absorbed in the same pay scale, grade and not promoted in the administrative channel in which the petitioners of Special Civil Application No. 4483 of 1984 were promoted. If the grade and pay of the petitioner No. 4 was protected and future promotions and grades were calculated, he would have received an amount of Rs. 1,50,000/- more. The persons who were appointed with the petitioners as Ward Officers and were juniors to the petitioners on the basis of joining service, have been given

higher promotion and higher pay scales. She has, therefore, submitted that on the basis of equal treatment to be given to the similarly situated persons, the reliefs prayed for in the present petition should be granted and the petition be allowed.

26.After having heard learned advocates appearing for the respective parties in all the three petitions and after having gone through their pleadings as contended in the memo of writ petitions, affidavit-in-replies as well as affidavit-in-rejoinders and sur-rejoinders and after having perused the documents attached therewith, the Court is of the view that none of the petitioners in any of these three petitions are entitled to the relief prayed for in their respective petitions.

27.As far as Special Civil Application No. 2662 of 1984 is concerned, initially, ad-interim

relief was granted on 22.05.1984 in terms of para 13 (a) of the petition whereby the respondent – Corporation was restrained from implementing the resolution of the Standing Committee dated 09.05.1984 and the Municipal Commissioner dated 10.05.1984. The petition was thereafter admitted and the interim relief was ordered to be continued in the same form on 27.09.1984. However, an affidavit dated 20.08.1984 sworn on 20.09.1984 was filed wherein it was stated that order under challenge was passed by the Commissioner on 10.05.1984 and various Ward Officers had taken over their duties as per the said order. This Court has passed the order of interim relief on 22.05.1984. Since the resolution of the Standing Committee had already been implemented on 10.05.1984 and the Ward Officers had taken over their duties accordingly, the interim relief granted by this Court in terms of para 13 (a) of the petition against implementation

of the Resolution of the Standing Committee and the Commissioner has become infructuous and the interim relief was, therefore, required to be vacated. Even otherwise, the respondent Corporation had passed an order dated 28.08.1984 whereby all the Ward Officers were reverted to their original posts. By virtue of this order, the grievance raised in the present petition no longer survived. It is, however, to be noted here that the very order dated 28.08.1984 reverting the Ward Officers to their original posts was challenged before this Court in Special Civil Application No. 4483 of 1984 and this Court has granted protection by staying those order. The respondents No. 2 & 3 of this petition were petitioners No. 7 & 2 respectively in Special Civil Application No. 4483 of 1984. It is equally important to note that all the three petitioners of this petition have retired and they have not pursued this matter any further. As observed earlier, after

withdrawal of the appearance of Mr. S.B. Vakil, learned Senior counsel appearing for the petitioner Nos. 1 & 2, no one appeared on their behalf at the time of hearing of this petition. Despite service of notice, no one appeared on behalf of petitioner No. 3 and 4 – Union. The petition is, therefore, of no survival value. Even on merits, the stand taken by the respondent Corporation appears to be just, proper and reasonable. If there were no permanent posts of Valuation Officers in the tax department and there have never been any such posts in the said department, there was no question of any one being appointed on the post of Valuation Officer in the tax department. When the staff had been drawn on several occasions from various departments of the Corporation to fill in certain temporary posts in the tax department for the purpose of quadrennial revision and when the work was over, the staff was sent back to its respective

parent department in the Corporation, it cannot be said that the respondent Corporation has appointed Ward Officers as Valuation Officers in the tax department. The respondent Corporation was, therefore, justified in not considering the petitioners or others for being appointed or promoted or transferred to any such posts of Valuation Officers in the tax department. In this view of the matter, Special Civil Application No. 2262 of 1984 deserves to be dismissed and it is accordingly dismissed. Interim relief, if any, stands vacated. Rule discharged without any order as to costs.

28.As far as Special Civil Application No. 4483 of 1984 is concerned, there are in all 23 petitioners. Out of these 23 petitioners, petitioner Nos. 4 to 11, 13, 16, 17 and 19 to 23 have already retired. Petitioner No. 15 has expired. Petitioners No. 1 to 3, 12, 14 & 18 are still working in the respondent

Corporation. By virtue of an order dated 28.08.1984, all these petitioners were reverted to their respective parent department in the respondent Corporation. The said action of the respondent Corporation was challenged by them in Special Civil Application No. 4483 of 1984 and this Court has admitted the petition on 27.09.1984. The Court has also granted interim relief restraining the respondent Corporation from placing the petitioners in any time scale other than Rs. 700 – 1300 which they were carrying for the posts which they were occupying before the impugned order. The Court has also made it very clear that the respondent Corporation shall pay the same salary and allowances to which the petitioners were entitled before the impugned order of reversion. The Corporation was granted liberty to move this Court for modification or variation of the order in light of the decision which it was competent to take in the matter.

By virtue of this interim order, the petitioners' pay scale was protected by this Court. The respondent Corporation has neither challenged this interim order in appeal before the Division Bench of this Court nor moved any application for modification despite the fact that such liberty was granted. The said interim order remains in existence till this date.

29.The Court does not find any infirmity in the stand taken by the respondent Corporation as there was no dispute about the fact that the petitioners were appointed to the posts of Ward Officers purely in an acting capacity. These posts were purely ex-cadre posts and the persons appointed on such posts retained their permanent lien in their parent posts in various department in the respondent Corporation. Thus the petitioners who were appointed purely on a temporary capacity on the posts of Ward Officers and who were holding permanent posts

in various departments of the Corporation and who were having their lien on such permanent posts in various departments of the Corporation could have no legal right to continue on such posts especially when the zonal system has been for all practical purposes wound up. The Court is of the view that the respondent Corporation has every right and indeed a duty to reconsider the issue and to have reorganization of set up and if in doing so, persons appointed in an acting capacity are reverted to their present posts, they could not make any grievance in this behalf. By sending these persons to their original posts would not amount to change with the service conditions of the petitioners. The petitioners, therefore, are not entitled to the final relief of quashing and setting aside the order dated 28.08.1984 and to get the pay scale of Rs. 700 – 1300 at the relevant time to the petitioners. There is also no question of quashing and setting aside the appointment of

respondent Nos. 2 to 7 in view of the aforesaid decision.

30.It is however clarified that by virtue of the interim order passed by this Court on 27.09.1984, the petitioners' pay scale was protected by this Court. The said protection was continued till this date. In course of time, many of the petitioners have been appointed, or absorbed in suitable departments. After 22 years, when this Court is now deciding the petition finally, it is not just and proper for this Court to permit the respondent Corporation to effect any recovery against the petitioners only because the final relief is not granted by this Court. The Court is, therefore, of the view that whatever benefits were granted and whatever advantages were availed of by the petitioners by virtue of the interim order of this Court, the same should not be withdrawn nor any recovery may be

effected against them.

31.Subject to the aforesaid observation and direction, Special Civil Application No. 4483 of 1984 is dismissed. Rule discharged. Interim relief, if any, stands vacated with no order as to costs.

32.As far as Special Civil Application No. 1593 of 1990 is concerned, there are four petitioners out of which petitioner Nos. 1 to 3 have already retired. Only the petitioner No. 4 is in service. Though the petitioners have claimed that they are similarly situated persons like the petitioners of Special Civil Application No. 4483 of 1984, they have not challenged the action of the respondent Corporation in 1984 along with those petitioners. The petitioners are also claiming the continuity benefit from 28.11.1981. Both these prayers are made by the petitioners in

this petition filed in the year 1990. The petition is therefore clearly suffered by an infirmity of delay and laches. At the time when the impugned order was passed on 28.08.1984, the petitioners were not adversely affected and hence they have not thought it fit and proper to challenge the said order. Once they have acquiesced with the said order, for whatever reason, it is not open for them to challenge the said order subsequently. The petitioners of Special Civil Application No. 4483 of 1984 were protected by this Court and if the petitioners of this petition would have filed the petition in 1984, the Court would have passed the similar order. However, the interim protection granted to those petitioners in 1984 would not be available to the petitioners of this petition and even this Court has also not thought it fit at the time of admission of this petition to grant any interim relief and simply rule was issued and it was ordered to be heard

along with Special Civil Application No. 4483 of 1984. Since the petitioners have come at a very belated stage and since they themselves had acquiesced the situation for more than six years, it is not open for them to turn around and challenge the reversion of 1984 in 1990.

33.Even otherwise, this Court has already taken the view while deciding Special Civil Application No. 4483 of 1984 that the petitioners who were appointed purely on a temporary capacity on the post of Ward Officers and were holding permanent posts in various departments of the Corporation who were having their lien on such permanent posts in various department, did not have any legal right to claim continuity in the said post especially when the zonal system where the posts of Ward Officers figured had been wound up for all practical purposes. The Court has dismissed the said petition and no final relief was granted

by the Court in favour of the petitioners of Special Civil Application No. 4483 of 1984. However, the benefits and advantages derived by those petitioners by virtue of an interim order of this Court would not be made available to the petitioners of this petition even on the ground of equality or simply because of the fact that they were similarly situated persons. Their delayed filing of the petition before this Court and acquiescence of the situation in 1984 has come in their way from claiming the benefits which were granted by virtue of the interim order of this Court in favour of petitioners of Special Civil Application No. 4483 of 1984. Since the Court was not of the view in granting any interim relief in favour of the petitioners at the time when this petition was admitted, the Court is of the same view even at the time of final disposal of this petition to grant any relief to the petitioners especially more so when Special Civil

Application No. 4483 of 1984 is also dismissed by this Court. Accordingly, Special Civil Application No. 1513 of 1990 is also dismissed. Rule discharged without any order as to costs.

34.In the above view of the matter, all the three petitions are hereby dismissed and rule is discharged in each of the three petitions with no order as to costs.

[K.A. PUJ, J.]

S*avariya*